

Supreme Court of Kentucky

ORDER

**IN RE: ORDER APPROVING THE LOCAL RULES OF PRACTICE
 FOR THE 5TH JUDICIAL CIRCUIT, CRITTENDEN, UNION
 AND WEBSTER CIRCUIT COURTS**

Upon recommendation of the Chief Circuit Judge of the 5th Judicial Circuit, Crittenden, Union, and Webster Circuit Courts, and being otherwise sufficiently advised,

The Local Rules of Practice for the Crittenden, Union, and Webster Circuit Courts are hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further orders of this Court.

Entered this the 2nd day of December 2009.


CHIEF JUDGE JOHN D. MINTON, JR.

**COMMONWEALTH OF KENTUCKY
FIFTH JUDICIAL CIRCUIT COURT
CRITTENDEN, UNION, WEBSTER COUNTIES**

LOCAL RULES OF COURT

LOCAL RULE 1 – AUTHORITY FOR AND CITATION OF RULES

These rules are enacted pursuant to SCR 1.040 and may be cited. Local Rule _____, 5th Cir.

LOCAL RULE 2 – EFFECTIVE DATE OF THESE RULES

These rules shall become effective upon final approval by the Supreme Court of Kentucky.

LOCAL RULE 3 – SESSIONS OF THE COURT

A. All sessions of court shall be continuous and trials will be scheduled at the discretion of the Court.

B. Motion days will be as follows:

(1) Union County : 2nd Monday @ 9:00 a.m. (Central Standard Time in all matters)

(2) Webster County : 1st Thursday @ 9:00 a.m.

(3) Crittenden County : 2nd Thursday at 9:00 a.m.

(4) Special Criminal Motion days may be scheduled as needed.

Should one of these dates fall on a holiday one should check with the clerk to determine the alternate date.

C. All civil motion will be noticed for 9:00 a.m., prevailing time. All criminal motions will be noticed for 9:00 a.m., prevailing time. Criminal motions may be passed to the end of the civil motion hour if necessary. Matters requiring presentation of evidence will be assigned a special time upon arrangement with the Court.

D. Juries shall be empanelled annually and shall serve for a period of twelve (12) months meeting at such time as may be ordered by the Court. All juries will report at 7:45 a.m., in all counties or unless otherwise ordered by the Court. New jury panels will be called for the following dates:

(1) Union County: First Tuesday in July.

(2) Crittenden County: First Monday in August.

(3) Webster County: Second Tuesday in August.

E. Grand Juries will be empanelled in each county on the opening day of each twelve (12) month term, and shall meet as follows, unless otherwise ordered by the Court:

(1) Union County: 1st Tuesday of each month at 8:30 a.m.

(2) Crittenden County: 1st Monday of February, April, June, August, October and December at 8:30 a.m.

(3) Webster County: Second Tuesday of each month at 8:30 a.m.

LOCAL RULE 4 – ASSIGNMENT OF CASES

A. Motions to set civil cases for trial will be treated as motions for pre-trial conference. At the hearing on all such motions, moving counsel should state to the Court that the case is substantially ready for trial. Civil cases will be scheduled for trial upon showing by all parties that they are substantially ready for trial, or in the Court's discretion. Mediation will be required of all cases unless the parties show good cause that it will not benefit the parties. See attached **Mediation Rules**.

B. Trial dates in criminal cases may be scheduled at arraignments, the pre-trial conference or upon motion of the Commonwealth or the Defendant. Criminal cases may be referred for Mediation upon agreement of the parties. If a case is accepted by the Court, an Order setting the

date, time, and location will be issued by the Court. The mediation will be conducted in accordance with the guidelines set forth by the Administrative Office of the Courts.

C. The 5th Judicial Circuit is composed of a Circuit Judge, Family (Circuit) Judge and a District Judge. When either Circuit Judge is unavailable because they are absent from the circuit and for good cause it is deemed necessary that a motion or other pleading be heard and decided without delay, the other Judge may do so if they find that the circumstances justify and require it.

1. In the event either Judge is disqualified for a good cause from trying any case, the case in which such Judge is so disqualified shall be by written order, reassigned to the other Division reciting therein the cause of such assignment. If both Judges believe themselves disqualified, the matter shall be certified to the Chief Regional Judge for the 5th Judicial Circuit for the appointment of a special judge.

2. This shall also apply to the District Judge in matters involving concurrent jurisdiction and to accept the indictments issued by the Grand Jury. The Family Court Judge and District Court Judge would only be requested to do so in the event the Circuit Judge is unavailable or for good cause.

LOCAL RULE 5 – MOTIONS

A. Service of written motions and notice thereof shall comply with the Kentucky Rules of Procedure and Kentucky Revised Statutes, specifically CR5.02 and CR 6.05. Motions must be filed at least seven (7) days prior to the day it is to be heard with copies to the Court at least five (5) days before hearing. Motions not complying with this requirement will be automatically passed to the next regular motion day and the clerk is hereby directed to docket same accordingly. Movant will be responsible for re-noticing said motions.

B. The clerk shall keep a motion docket for only those motions to be heard on regular

motion days. This motion docket will be called on motion day. The Court, in its discretion, may hear and determine any motion or other matter before it at any time in accordance with the Rules of Civil Procedure.

C. All motions, except those included in an answer, when served on the adverse party shall contain a date on which said motion shall be heard, which date shall not be later than the next regular motion day at which the motion could be heard. Any motion notice which fails to include the date of hearing shall be treated as if no motion had been filed.

D. Motions may be made under CR 78(2) and shall direct the opposing attorney's attention to the fact that under this rule the motion may be granted routinely by the Court ten (10) days after filing unless an objection is received or a response filed. An appropriate order shall be submitted with the motion. (This does not apply to motions for summary judgment - see Rule 15.) If a party opposing the motion desires oral hearing, he shall so state, and proceed to notice the motion for the following motion day.

E. All motions to compel discovery compliance shall contain a certificate by counsel that she or he has conferred or corresponded with opposing counsel and that they are unable to reconcile their differences without a hearing. The Court may, in its discretion, allow attorneys fees and impose appropriate sanctions against counsel who fail to reasonably comply with discovery requests.

F. All motions, proposed orders or other pleadings which do not contain the correct style and case or indictment number will not be filed but returned to the Movant.

G. Personal communications between counsel, parties or any other persons shall not be filed of record except upon motion and court order permitting the same. Nothing shall be filed of

record unless submitted for filing by an attorney of record in the case in which filing is requested, or by a party of record who is acting pro se. Any question concerning the propriety of filing of any item shall be brought to the Court's attention immediately by the clerk or an attorney of record, or party of record acting pro-se.

LOCAL RULES 6 – ENTRY OF ORDERS AND JUDGMENTS

In civil cases, whenever any ruling is made, verdict rendered, or judgment rendered, an order or judgment in conformity therewith shall be prepared by counsel for the successful party, shall be endorsed "Have Seen" by counsel for all parties thereto as in conformity to the ruling or judgment, and shall be presented to the Court. If the party against whom the order or judgment is entered is not represented by counsel, that fact shall be endorsed thereon.

When signed by the Judge, the order or judgment shall be delivered to the clerk for entry. All orders and judgments shall be prepared as separate instruments.

LOCAL RULE 7 – DEFAULT JUDGMENTS

A party seeking a judgment by default where Rule 55.01 of the Kentucky Rules of Civil Procedures applies shall first file a written motion for such a judgment and have the motion placed in the appropriate Motion Day docket, with a tendered judgment and notice to the party in default. The attorney seeking the default judgment need not be present for the motion, and the default judgment may thereafter be entered after notice has been given and it is determined by the Court that it meets all necessary legal requirements.

LOCAL RULE 8 – AGREED ORDERS

Agreed orders and judgments, and in forma pauperis motions, may be submitted to the Court at any time and should not be placed on the Motion Day docket.

LOCAL RULE 9 – COPIES

A. At least two copies of the complaint in all civil cases shall be filed with the clerk.

B. Copies of all motions, responses, briefs, and memoranda shall be mailed by the attorneys to the Judge, at the following office address:

P.O. Box 126
Dixon, Ky. 42409

LOCAL RULE 10 – CRIMINAL CASES

No criminal indictment will be accepted, entered or processed by the Circuit Court unless the indictment states on its face, the defendant's name, last known address and social security number.

The Court may grant exceptions to this order on a case by case basis if the Commonwealth files with the Court an accompanying affidavit by the complaining witness explaining why the required information cannot be provided. Once an indictment has been returned and processed by the Court, that defendant becomes under the jurisdiction of the Circuit Court and if the Court issues a warrant rather than its usual summons, the warrant shall immediately be forwarded to the sheriff of the county and to any other law enforcement agencies or officers who request same from the Circuit Clerk. The clerk will note on the case file jacket each officer or agency who has a copy of the warrant.

Arraignments will be held the same day the indictment is returned at 11:00 a.m. Those defendants having a preliminary hearing in District Court will receive notice of the Grand Jury / Arraignment date following their preliminary hearing if bound to the Grand Jury by District Court. Failure to appear will result in a bench warrant except for good cause.

If the case is presented to the Grand Jury as a direct submittal and indictment returned, a

summons will be issued for the Defendant unless otherwise requested by the Commonwealth. Arraignment will be scheduled for the next available Court date.. If a “not found” return is made, the Court will issue a warrant for arrest and a new arraignment will be scheduled at the next available Court date. If the defendant has not been found by the second hearing, he or she will be classified a fugitive and removed from the Court’s active docket.

A. At the time of arraignment each case shall be assigned a time for pretrial conference. Pretrial Conferences shall be held as a matter of course in all criminal matters. At arraignment, the Court may enter a standard discovery order. Further discovery may be requested in writing as is necessary.

B. The attorney for the Defendant, and the Defendant, unless otherwise relieved, shall be in attendance at the pretrial conference.

C. The case may be assigned for trial at arraignment or pretrial conference date, with a designated report date at least 30-45 days prior to the trial. After the report date, the Court will not accept or consider any plea agreement between the defendant and the Commonwealth, or continue any case, except for good cause.

D. On or before the report date, the attorneys shall advise the Court in writing whether they are ready for trial, and the probable length of trial. When a conflict exists, and two or more trials are scheduled for the same day, the Court will assign priority to the cases scheduled. Any motion for a continuance must be made and heard prior to the designated report date, except for good cause shown.

LOCAL RULE 11 – APPEALS FROM DISTRICT COURT

Parties appealing district court judgments or appealable orders may have the district court proceeding transcribed, except that the Court may waive this requirement upon proper motion.

Any party to such appeal who feels that a transcript of the evidence or part thereof would be helpful to the Court may submit same at any time prior to submission of the case. In counties having video of District Court proceedings counsel should designate where the testimony in issue can be found.

LOCAL RULE 12 – MASTER COMMISSIONER PRACTICE

The Court will refer all appropriate cases and matters to the Master Commissioner of this circuit, and the Master Commissioner shall handle all such cases and matters as provided by the Rules of Civil Procedure, Kentucky Revised Statutes, or by court order in individual cases.

LOCAL RULE 13 – PLEADINGS

All pleadings, motions, and memoranda shall contain the name, address, phone number, fax number, and e-mail address (if available) of counsel.

LOCAL RULE 14 -WITHDRAWAL OF COUNSEL

Leave of Court shall be obtained to withdraw as counsel after an entry of appearance has been made. Such leave can only be obtained by a motion served on the client and other parties and properly noticed for hearing. Substitution of counsel may be accomplished by a notice signed by the withdrawing counsel and the entering counsel. The Court will not allow withdrawal of counsel within thirty (30) days of an assigned trial date without good cause shown by the requesting counsel

LOCAL RULE 15 — SUMMARY JUDGMENT

Motions for summary judgment shall not be noticed for hearing, but shall be accompanied by a memorandum of law supporting the motion. Opposing memoranda may be submitted within thirty (30) days with fifteen (15) days allowed for reply, after which the motion will stand submitted. The Court will consider any party's request for oral argument or may request same on

its own. Parties shall submit an accompanying disc containing their motion, response or reply, and a proposed order.

LOCAL RULE 16 - PRETRIAL DIVERSION PROGRAM

The attached protocol for the pretrial diversion program is hereby adopted by this Court.

LOCAL RULE 17 - MOTIONS FOR SHOCK PROBATION KRS 439.265

All pro-se motions for shock probation shall include:

- A. Date of entry of judgment and sentence;
- B. Length of sentence imposed;
- C. A statement that the defendant has been incarcerated at least 30 days since the date of sentence;
- D. Whether the Commonwealth recommended shock probation in the negotiated plea and attach a copy of Commonwealth's offer supporting same; and
- E. Information which would assist the Court such as:
 - 1. Where defendant will be living,
 - 2. Treatment or rehabilitation program the defendant intends to attend (if applicable),
 - 3. Where defendant will be employed with supporting document from the employer, and
 - 4. Any other reason counsel believes the Court should consider.
- F. The correct case number

All motions not complying with this order will be summarily denied. Motions filed by counsel should substantially comply with the above requirements.

LOCAL RULE 18 - JURY SELECTION

Pursuant to KRS 29A.080 and KRS 29A.100, relative to jury selection, it is ordered as follows:

A. This order shall become effective upon the date of its entry and shall apply to all juror selection in all courts of the Fifth Judicial Circuit, Commonwealth of Kentucky.

B. The Circuit Court Clerk of each county in the judicial circuit is hereby designated as the Courts "Designee" for the purpose of determining on the basis of information provided on the jury qualification form whether any prospective juror is disqualified for jury service for any of the following reasons:

1. Is under eighteen (18) years of age;
2. Is not a citizen of the United States;
3. Is not a resident of the county;
4. Has insufficient knowledge of the English language;
5. Has been previously convicted of a felony and has not been pardoned or received a restoration of civil rights by the Governor or other person of the jurisdiction in which the person was convicted.
6. Is presently under indictment; or
7. Has served on a jury within the time limitation set out under KRS 29A.130.

In the event such determination is made, the Designee shall note such determination in the space provided on the juror qualification form.

C. The Court's Designee, pursuant to KRS 29A.100 (2) is hereby authorized to excuse any juror from service for a period not to exceed ten (10) days, or to postpone their service for a period not to exceed twelve (12) months. The reasons for such excuse or postponement shall be entered on the juror qualification form.

D. Upon the request of any prospective juror for a permanent exemption from jury service because of a permanent medical condition, which must be supported by certification from the

juror's physician, the Designee shall within five (5) days refer said request and medical certification to the Chief Circuit Judge for consideration. If the permanent exemption is granted, the Designee shall immediately notify the juror and the Administrative Office of the Courts so the name may be removed from the master list.

E. The contents of juror qualification forms shall be made available to the trial judge and to parties or their attorneys of record unless the Chief Circuit Judge or his designee determines in any instance in the interest of justice that this information shall be kept confidential or its use limited in whole or in part. See Administrative Procedure of the Court of Justice, Part II Section 9, Subsection (7). The forms and the information contained therein shall remain confidential and shall not be disclosed to anyone except the parties, the attorneys of record, persons associated with the office of the attorneys of record, persons employed by the attorneys of record to aid in jury selection, or court officials. The forms may be photocopied at the expense of the requesting party or attorney, but such copies are to be destroyed within a reasonable time following the jury term. .

LOCAL RULES 19 - ADDITIONAL COSTS FOR EXTRAORDINARY SERVICES

Pursuant to Kentucky Rules of Civil Procedure (CR) 3.02 (3)(b) and (c), IT IS HEREBY ORDERED that the Clerk of the Circuit Courts shall, effective upon the date of entry hereof, assess in all applicable civil cases, the following additional costs for extraordinary services:

A. A fee of \$50.00 in civil cases in each instance in which the number of items filed surpasses 50 in number or a multiple thereof, (the 51st item, the 101st item, etc.) to be collected following entry of the judgment.

B. A fee of \$100.00 per day for each day of a civil jury trial in excess of four (4) days, to be collected following entry of the judgment.

LOCAL RULE 20 - EFFECT ON PRIOR LOCAL RULES

Prior local rules heretofore adopted by the Court are deemed superseded by these rules.

LOCAL RULE 21 - APPLICABILITY OF RULES OF CIVIL PROCEDURE

In cases not covered by these rules consult the Kentucky Rules of Civil Procedure.

A copy of these local rules may be found on the Kentucky Court of Justice website.

**THESE ARE THE LOCAL RULES OF THE 5TH JUDICIAL CIRCUIT COURT
SERVING CRITTENDEN, WEBSTER AND UNION COUNTIES.**



RENE' WILLIAMS, CIRCUIT JUDGE

LOCAL RULE ON MEDIATION 5TH JUDICIAL CIRCUIT

Rule 1. Preamble and Scope

The 5th Judicial Circuit finds that under some circumstances the process known as mediation may provide an efficient and cost-effective alternative to traditional litigation, and further, that the wise and judicious use of mediation may benefit litigants.

Mediation is intended to help both litigants and the Courts facilitate the settlement of disputes. Litigants should participate in good faith and in an earnest attempt to resolve their differences.

This Rule refers to mediation. Nothing in this Rule shall prohibit parties from resolving disputes through other methods. However, in any case where one party may pose a risk of harm to another party or family member, mediation should not be used.

Rule 2. Mediation defined.

Mediation is an informal process in which a neutral third person(s) called a mediator facilitates the resolution of a dispute between two or more parties. The process is designed to help disputing parties reach an agreement on all or part of the issues in dispute. Decision-making authority remains with the parties, not the mediator. The mediator assists the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives.

Rule 3. Referral of cases to mediation.

At any time on its own motion or on motion of any party, the Court may refer a case or portion of a case for mediation. In this decision, the court shall consider:

- (a) the stage of the litigation, including the need for discovery, and the extent to which it has been conducted;
- (b) the nature of the issues to be resolved;
- (c) the value to the parties of confidentiality, rapid resolution, or the promotion or maintenance of on-going relationships;
- (d) the willingness of the parties to mutually resolve their dispute;
- (e) other attempts at dispute resolution; and
- (f) the ability of the parties to participate in the mediation process including the ability of the parties to pay the cost of mediation.

Rule 4. No stay of proceedings.

Unless otherwise ordered by the Court, mediation shall not stay any other proceedings.

Rule 5. Appointment of mediator.

Within fifteen (15) days of referral, the parties shall agree on a mediator or a mediation service. If the parties cannot agree, they shall notify the court, which will select a mediator or a mediation service.

Rule 6. Mediator compensation.

The mediator shall be compensated at the rate agreed between the mediator and the parties if the mediator is chosen by agreement. If the mediator is appointed by the Court, the fee for the mediator shall be reasonable and no greater than the mediator's standard rate as a mediator and said fees shall be subject to court approval. Unless otherwise agreed by the parties or ordered by the Court, the parties shall equally divide the mediator's professional dues.

Rule 7. Mediation procedure.

Following selection of the mediator, the mediator shall schedule an initial mediation conference within thirty (30) days which shall be held within sixty (60) days thereafter or such other time as scheduled by the Court. The mediation conference shall be held in the county in which the case is pending or at a site agreed upon by the parties. The mediator may meet with the parties or their counsel prior to the mediation conference for the purpose of establishing a procedure for the mediation conference. The mediator may require the parties to submit a confidential statement of the case or other materials that the mediator may reasonably believe appropriate for efficiently conducting the mediation conference.

Rule 8. Attendance at mediation conference.

The parties must attend the mediation conference. Counsel shall attend the mediation conference unless otherwise agreed to by the parties and the mediator or ordered by the Court. If a party is a public entity, it shall appear by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision making body or officer of the entity. If a party is an organization other than a public entity, it shall appear by the physical presence of a representative, other than the party's counsel of record, who has full authority to settle without further consultation. If any party is insured for the claim in dispute, that party shall also be required to have its insurer(s) present by the physical presence of a representative of the insurance carrier(s) who is not that carrier's outside counsel; this representative must have full settlement authority. The foregoing requirements of attendance may be varied only by stipulation of the parties or by order of the Court for good cause shown.

Rule 9. Completion or termination mediation.

The mediator may terminate the mediation conference after a settlement is reached or when the mediator determines that continuation of the process would be unproductive. After the initial mediation conference, mediation shall continue only by the agreement of the parties, their counsel and the mediator, or by order of the Court.

Rule 10. Report to the court.

The mediator shall report to the court that the mediation has not occurred, has not been completed, or that the mediation has been completed with or without an agreement on any or all issues. With the consent of the parties, the mediator may also identify those matters, which, if resolved or completed, would facilitate the possibility of a settlement.

Rule 11. Agreement.

If an agreement is reached during the mediation conference, it shall be reduced to writing and signed by the parties. The parties shall be responsible for the drafting of the agreement, although the mediator may assist in the drafting of the agreement with the consent of the parties.

Rule 12. Confidentiality.

- A. Mediation sessions shall be closed to all persons other than the parties, their legal representatives, and other persons invited by the mediator with the consent of the parties.
- B. Mediation shall be regarded as settlement negotiations for purposes of K.R.E. 408.
- C. Mediators shall not be subject to process requiring the disclosure of any matter discussed during the mediation, but rather such matters shall be considered confidential and privileged in nature except on order of the Court for good cause shown. This privilege and immunity reside in the mediator and may not be waived by the parties.
- D. Nothing in this rule shall prohibit the mediator from reporting abuse according to KRS 209.030, KRS 620.030, or other applicable law.

**CLASS D FELONY PRETRIAL DIVERSION PROTOCOL
FOR THE 5TH JUDICIAL CIRCUIT**

I. Definition

Pretrial diversion is the postponement of imposition of sentence upon any person who qualifies for the program, for a time period not to exceed five (5) years, subject to certain conditions established by the Court.

II. Persons Eligible

- A. Any person charged with a Class D felony, who has not had a felony conviction in the ten (10) years prior to commission of the current offense, or who has not been on felony probation or parole or released from felony incarceration within the ten (10) years prior to commission of the current offense, shall be eligible for pretrial diversion.
- B. The person charged must enter a plea of guilty, or a plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), before becoming eligible for pretrial diversion.
- C. Persons ineligible for probation, parole or conditional discharge under KRS 532.045 shall be ineligible for this program.
- D. A person convicted of a Class D felony for which early release is disallowed by statute, including KRS 189A.010(8) shall be ineligible for this program.
- E. No person shall be eligible for pretrial diversion who has committed a sex crime as defined in KRS 17.500. A person who is on pretrial diversion on July 12, 2006, may remain on pretrial diversion if the person continues to meet the requirements of the pretrial diversion and the registration requirements of KRS 17.510.
- F. No person shall be eligible for this program more than once in any five (5) year period.

III. Procedure

- A. After indictment in circuit court, and no later than ten (10) days before trial, any person eligible for the program may apply to the Circuit Court and the Commonwealth for entry of a pretrial diversion order.
- B. In applying for pretrial diversion, counsel for the defendant must state, and the defendant must agree on the record, that in the event diversion is

granted, any right to a speedy trial or disposition of the charge against him/her is waived.

- C. The Commonwealth shall make a written recommendation to the Court in response to each application.
- D. Before making a recommendation to the Court, the Commonwealth shall:
 - 1. Have a criminal record check made by telephoning Pretrial Services at AOC at 1-800-928-6381. **DO NOT** send requests to the local Pretrial Services Officer.
 - 2. Interview and seek input from the victim and/or victim's family and advise them of the time, date and place the motion will be heard by the Court, and,
 - 3. When diversion is recommended, the Commonwealth must make written recommendations to the Court of conditions for the pretrial diversion as well as the appropriate sentence to be imposed if the diversion agreement is unsuccessful.

IV. Order of Pretrial Diversion

- A. The Court may, in its discretion, order pretrial diversion for eligible petitioners upon terms and conditions it deems appropriate. AOC Form 345, styled Order Granting Pretrial Diversion of a Class D Felony, was designated for this purpose.
- B. The Order of Diversion **shall** include:
 - 1. Restitution, if applicable.
 - 2. Whether the diversion shall be supervised or unsupervised (and include supervision fees, if applicable).
 - 3. Duration of the diversion.
 - 4. Require defendant to obey all rules and regulations imposed by Probation and Parole.
 - 5. As required by KRS 533.030(1), conditions of probation – restitution, direct the defendant not to commit any offense during the period of the pretrial diversion. Specifically, direct the defendant to comply with any other provision of KRS 533.030 or any other condition the Court deems appropriate.
- C. The Order of Diversion **may** include:
 - 1. That the petitioner remain drug and alcohol free and be subject to random testing.
 - 2. That the petitioner have no violation of the Penal Code or the Controlled Substances Act.

3. That the petitioner possess no firearm or any other deadly weapon.
- D. Duration of the pretrial diversion shall not exceed five (5) years without agreement of the petitioner. Duration of the diversion agreement shall not be less than the time required to make restitution in full.

V. Voiding a Diversion Order

- A. After a hearing, with notice to the Commonwealth and to the defendant, the court may void a person's participation in the pretrial diversion program upon a showing of failure to comply with the conditions of diversion or failure to make satisfactory progress. AOC Form 346, styled Order Voiding Pretrial Diversion of a Class D Felony, was designed for this purpose.
- B. If an order of pretrial diversion program is voided, the defendant shall be sentenced according to law, based on his or her prior plea of guilty or plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970).
- C. Under KRS 533.256(2), the same criteria applicable to a probation revocation hearing apply to a proceeding to void an order granting diversion. Pursuant to KRE 1101(d)(5), the Rules of Evidence are inapplicable in miscellaneous proceedings such as those revoking probation. A proceeding to determine whether an order granting diversion should be voided also constitutes a miscellaneous proceeding and therefore the Rules of Evidence are inapplicable to such hearings.

VI. Completion of Diversion Program

If the defendant successfully completes the provisions of the pretrial diversion agreement, the charges against the defendant shall be dismissed.